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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,453	11/07/2003	Howard Murad	060915-0031	9723
23838 7590 01/12/2009 KENYON & KENYON LLP 1500 K STREET N.W. SUITE 700 WASHINGTON, DC 20005				
EXAMINER				
VU, JAKE MINH				
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1618				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/702,453

**Applicant(s)**

MURAD, HOWARD

**Examiner**

JAKE M. VU

**Art Unit**

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 October 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 28-50 is/are pending in the application.  
4a) Of the above claim(s) 41-50 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 28-40 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/CDC)  
4) ☐ Interview Summary (PTO-413)  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_  
Paper No(s)/Mail Date \_\_\_\_\_

### DETAILED ACTION

Receipt is acknowledged of Applicant's Amendment filed on 10/27/2008.

- Claims 28, 29, 41 have been amended.
- Claims 28-50 are pending in the instant application.
- Claims 41-50 have been previously withdrawn from consideration.

### *Double Patenting*

Claims 28-40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over of U.S. Patent No. 6,673,374 **are maintained** for reasons of record in the previous office action filed on 07/22/2008.

Note, it is acknowledged that Applicant's will submit a terminal disclaimer over the related applications when all other rejections and/or objections are overcome.

Claims 28-40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over U.S. Patent No. 7,018,660; 6,383,523; 6,071,541; 6,296,880 in view of GARRISON et al (US 5,569,651) **are maintained** for reasons of record in the previous office action filed on 07/22/2008.

Note, it is acknowledged that Applicant's will submit a terminal disclaimer over the related applications when all other rejections and/or objections are overcome.

***Claim Rejections - 35 USC § 102***

Claims 28, 30, 32, 33-36, and 40 are rejected under 35 U.S.C. 102(e) as being anticipated by OLIVER (US 5,869,062) **are withdrawn** in view of Applicant's Amendment.

However, upon further consideration, a new ground(s) of rejection is made as discussed below.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 28, 30, 32-37, 40 are rejected under 35 U.S.C. 102(b) as being anticipated by SCHMIDT (US 5,139,788).

Applicant's claims are directed to a composition comprising of: 0.01-1.5% wt. of hydrogen peroxide; a hydrophilic moisturizing agent; a hydrophobic moisturizing agent; an exfoliant, such as citric acid; and an anti-inflammatory agent. Additional limitations include: pharmaceutical acceptable carrier; stabilizer; lotion.

SCHMIDT teaches an antimicrobial agent (see Title) for the skin (see col. 2, line 7) comprised of: 0.1-3% wt. of hydrogen peroxide (see col. 4, line 17-19); a conditioning agent, such as glycerine, which reads on hydrophobic moisturizing agents; water, which reads on hydrophilic moisturizing agent; an exfoliant, such as lactic acid (see col. 3, line 12) or citric acid (see col. 8, line 54). Additional disclosures include: pharmaceutical

acceptable excipient, such as diluent (see col. 7, line 11); wetting agents (see col. 5, line 20), which reads on surfactant; stabilizer (see col. 4, line 66); skin conditioning agents are added to reduce the irritation of the surface of application which may result from the antimicrobial agent (see col. 5, line 54-56), which would read on anti-inflammatory agent; topical application (see col. 2, line 6-7), which reads on lotion.

### ***Claim Rejections - 35 USC § 103***

Claims 28-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over OLIVER (US 5,869,062) in view of NADAUD et al (US 5,605,694), GARRISON et al (US 5,569,651) and FOTINOS (US 6,335,388) **are withdrawn** in view of Applicant's Amendment.

However, upon further consideration, a new ground(s) of rejection is made as discussed below.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHMIDT (US 5,139,788) in view of NADAUD et al (US 5,605,694), GARRISON et al (US 5,569,651), FOTINOS (US 6,335,388), and MCATEE et al (US 5,811,111).

Applicant's claims are directed to a composition comprising of: 0.01-1.5% wt. of hydrogen peroxide; a hydrophilic moisturizing agent; a hydrophobic moisturizing agent; an exfoliant, such as citric acid; and an anti-inflammatory agent. Additional limitations include: pharmaceutical acceptable carrier; amphoteric surfactant; stabilizer.

SCHMIDT teaches an antimicrobial agent (see Title) for the skin (see col. 2, line 7) comprised of: 0.1-3% wt. of hydrogen peroxide (see col. 4, line 17-19); a conditioning agent, such as glycerine and propylene glycol, which reads on moisturizing agents; an exfoliant, such as lactic acid (see col. 3, line 12) or citric acid (see col. 8, line 54). Additional disclosures include: pharmaceutical acceptable carrier, such as water (see col. 8, Table 1); wetting agents (see col. 5, line 20), which reads on surfactant; stabilizer (see col. 4, line 66); skin conditioning agents are added to reduce the irritation of the surface of application which may result from the antimicrobial agent (see col. 5, line 54-56).

SCHMIDT does not specifically teach using hydrophilic moisturizing agent, such as hyaluronic acid; hydrophobic moisturizing agent, such as ceramide; anti-inflammatory agent; amphoteric surfactant.

NADAUD teaches a composition for skin treatment (see abstract) comprised of: hydrophilic moisturizing agent, such as hyaluronic acid (see col. 4, lines 54-55 and col. 6, line 22); hydrophobic moisturizing agent, such as glycerol, which is glycerine; alpha-hydroxy acid (see col. 4, line 56); and surfactants.

GARRISON teaches a composition for skin treatment, such as acne (see abstract) comprised of: hydrophilic moisturizing agent, such as propylene glycol (see

col. 4, line 50); hydrophobic moisturizing agent, such as glycerin (see col. 4, line 18; exfoliant, such as lactic acid (see col. 4, line 17) or citric acid (see col. 2, line 23-25), which are alpha-hydroxy acid; anti-inflammatory agent, such as salicylic acid (see col. 4, line 17); emulsifiers (see col. 4, line 3, which are surfactants; and preservatives (see col. 4, line 5).

FOTINOS teaches ceramide is a moisturizing agent that also has anti-radical activity (see col. 6, line 10-12).

MCATEE teaches amphoteric and anionic surfactants in combination with active ingredients, such as peroxide, have been found to be useful for cleansing the skin (see col. 2, line 20-26).

It would have been obvious to the person of ordinary skill in the art at the time the invention was made to incorporate hydrophilic moisturizing agent, such as hyaluronic acid; hydrophobic moisturizing agent, such as ceramide; amphoteric surfactant and anti-inflammatory agent, such as salicylic acid, into OLIVER's composition. The person of ordinary skill in the art would have been motivated to make those modifications and reasonably would have expected success because surfactants, hydrophilic and hydrophobic moisturizers are commonly added into creams and lotions intended for the skin; ceramide is a moisturizer that has anti-radical attributes that would be beneficial to the skin; anti-inflammatory agents, would reducing the irritation of the alpha-hydroxy acids; and the alpha-hydroxy acids, such as citric acid and lactic acid, were well-known to be used in anti-acne compositions.

The references do not specifically teach adding the ingredients in the amounts claimed by Applicant. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ and reasonably would expect success. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of Applicant's invention.

Note, the references' composition would be inherently capable of "sufficient to inhibit hydrogen peroxide decomposition" as claimed by Applicant, since the references' composition has the same ingredients as claimed by Applicant.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not



mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Telephonic Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAKE M. VU whose telephone number is (571)272-8148. The examiner can normally be reached on Mon-Tue and Thu-Fri 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jake M. Vu/  
Primary Examiner, Art Unit 1618